

**Internal Revenue Service**

**Department of the Treasury**

Washington, DC 20224

**NO PROTEST RECEIVED**  
Release copies to District

Date \_\_\_\_\_

Surname \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number \_\_\_\_\_

ID # \_\_\_\_\_

In Reference to: OP:E:BO:T:2

Date:

FEB 18 1999

EIN: \_\_\_\_\_

KD: \_\_\_\_\_

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

We have reviewed the information you have submitted and have concluded that you have been unable to establish that you will be organized and operating exclusively for purposes outlined in section 501(c)(3) of the Code.

You were incorporated to provide decent and affordable housing for lower income residents in your community. You are not yet operational but you appear to have a binding agreement with the \_\_\_\_\_ to construct an apartment complex. You have applied for an allocation of Low Income Housing Tax Credits from the \_\_\_\_\_. You consider yourself to be an extension of the City of \_\_\_\_\_ however you have no legal connection with that agency. You have represented that you were established "solely for the purpose of owning, developing, and managing the proposed Tax Credit housing project. You have also stated that you will not manage the project.

In order to obtain the necessary funds to build this facility you intend to establish a limited partnership arrangement with yourself as the controlling general partner. You have submitted a copy of a blank partnership agreement and represent that your agreement will be exactly like the one you submitted. You have not sought investors yet. Nor have you entered into any contracts with a company to develop the property.

Section 501(a) of the Code provides, in part, for the exemption from federal income tax of organizations described in section 501(c)(3) of the Code.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

Re: [REDACTED]

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. It includes relief of the poor and distressed, the advancement of religion, the advancement of education and lessening the burdens of government.

Rev. Proc. 90-27, 1990-1 C.B. 514 sets forth procedures with regard to applications for recognition of exemption from federal income tax under sections 501 and 521 of the Code.

Section 5.02 of Rev. Proc. 90-27 provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct.D. 1650, C.B. 1945, 375, the Supreme Court of the United States held that the presence of a

Re: [REDACTED]

nonexempt purpose, if more than insubstantial, would destroy tax exempt status as a charitable organization.

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Old Dominion Box Co. v. United States, 477 F 2d 344 (4th Cir. 1973) cert. denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In order for you to establish that you qualify for recognition of exemption under section 501(c)(3) of the Code you have the burden to establish that you clearly are and will continue to be operating exclusively for charitable purposes within the meaning of section 501(c)(3). See Harding Hospital, Inc. v. United States, *supra*. In Old Dominion Box Co. v. United States, *supra*, the court held that operating for the benefit of private parties constitutes a substantial non-exempt purposes. Exemption is denied if it appears that noncharitable or noneducational activities are more than insubstantial. See Better Business Bureau of Washington, D.C., Inc. v. United States, *supra*.

The information you have submitted establishes that your sole role in this endeavor will be to act as a general partner in a limited partnership. If operated in the manner you have represented this partnership will provide for housing for low income residents in the County. However you have no investors yet.

It is the experience of the Service that a determination as to the qualification for exemption of an organization which has or is to enter into a limited partnership requires close scrutiny. Before a ruling can be issued all final documents must be reviewed to ensure that no private benefit is present. We have often found that initial agreements are substantially modified in the course of soliciting investors. You have failed to establish that you will be operated in furtherance of charitable purposes. Accordingly, you are not exempt under section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed

Re: [REDACTED]  
[REDACTED]

by one of your principle officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principle officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the U.S. Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your Key District Director. Thereafter, any questions about your federal tax status should be addressed to that office. Also, the appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

[REDACTED]  
[REDACTED]  
[REDACTED]

Sincerely,  
(signed) Garland A. Carter  
Garland A. Carter  
Chief, Exempt Organizations  
Technical Branch 2

01616612

2/16/99

01616612

[REDACTED]  
[REDACTED]  
[REDACTED]